

HONORABLE DAVID ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ELIAS PEÑA, ISAIAH HUTSON, and
RAY ALANIS,

Plaintiffs,

v.

CLARK COUNTY, WASHINGTON,

Defendant.

NO. 3:21-cv-05411-DGE

**PRAECIPE RE PLAINTIFFS' MOTION
FOR RECONSIDERATION**

Note on Motion Calendar: May 18, 2023

Plaintiffs hereby request that the attached Exhibits A, B and C be attached to dkt. 108. Plaintiffs' counsel erroneously filed a version that did not attach the referenced exhibits.

DATED: May 18, 2023.

BRESKIN JOHNSON & TOWNSEND, PLLC

By: s/ Roger M. Townsend

Roger M. Townsend, WSBA #25525

Daniel F. Johnson, WSBA #27848

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**MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND**

By: /s Leticia M. Saucedo

Leticia M. Saucedo (Pro Hac Vice)

NY Bar No. 2953255

1 1512 14th Street,
2 Sacramento, CA 95814
3 Phone: 916-444-3031
4 Email: Isaucedo@maldef.org

5 By: /s Luis Lozada
6 Luis Lozada (Pro Hac Vice)
7 Fernando Nuñez (Pro Hac Vice)
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11 Phone: 213-629-2512
12 Email: llozada@maldef.org
13 Email: fnunez@maldef.org

14 *Attorney for Plaintiffs*
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EXHIBIT A



proud past, promising future

CLARK COUNTY
WASHINGTON

PUBLIC WORKS

Operations

July 12, 2017

Elias Pena
[REDACTED]

Dear Elias:

Congratulations on being selected for the position of Highway Maintenance Worker in the Road Maintenance Division of the Public Works Department. As agreed, your work hours will be on a revolving 9/80 schedule working Monday through Thursday 6:30 a.m. to 4:00 p.m. and every other Friday 6:30 a.m. to 3:00 p.m. (subject to change).

In our discussion, we agreed on a starting date of Tuesday, August 15, 2017. Your initial rate of pay will be \$18.68 per hour at Range PS.104, Step 1. Positions in this class are represented by the Association of Federal, State, County, and Municipal Employees, Local 307CO.

The first six months of your employment is considered the final stage in the selection process and is called a probationary period. This is intended to provide you and your manager an opportunity to confirm your decision to establish the employment relationship.

This offer of employment is contingent upon the successful completion of the pre-placement drug test, hearing test, and background investigation. For compliance with 49 CFR§391.21, Department of Transportation guidelines for placement into a safety-sensitive position, and RCW 43.43.830 and RCW 35.61.130, and in accordance with County policy, you are required to complete the following on or prior to your first day of employment. If you have already completed this information you may disregard this request.

- Provide a 3-year Abstract of Driving Record furnished by the Washington State Department of Licensing;
- Provide proof of a current and valid driver's license;
- Complete the Vehicle Use Agreement form;
- Complete the baseline hearing test;
- Successfully pass a pre-placement drug screen; and
- Complete the Safety Performance History Records Request form for all employers within the prior 3 years.
- Provide a copy of a current Flagger's card.

You will be required to provide proof of a current and valid Class A Commercial Driver's License, with tanker "N" endorsement within five months of your date of hire.

Elias Pena
Page 2
July 12, 2017

On your first day of employment, please report to Carl Oman's office and bring the enclosed forms. You are required to bring **original** document(s) that establish your identity and employment eligibility to work in the United States. Please refer to the List of Acceptable Documents on the last page of the I-9 form.

You are scheduled to attend new employee benefits orientation Part One: Human Resources, 8:00 am – 1:00 pm, Tuesday, August 15, 2017 and Part Two: Risk Management, 8:30 am – Noon, Thursday, August 17, 2017 in Room 679 on the 6th floor in the Public Service Center, 1300 Franklin Street. You will report to your assigned work area that morning as scheduled before the orientation.

I am pleased to welcome you to Clark County Public Works and wish you success in your new position. To confirm your acceptance of the position, please sign the enclosed copy and return it to me. If you have any questions, please feel free to call me.

Sincerely,



Carl Oman
Operations Superintendent

Cc: Leslie Harrington-Smith, Recruiter
Josh Young, HR Representative
Sheila Ensminger, Office Manager
Karyn Morrison, AFSCME, Local 307CO

Accepted



Date

7/12/17

CLARK COUNTY

PERSONNEL ACTION FORM – New Hire Data Sheet

Hire Date 8/15/17
 Attach offer letter

From Recruitment Number 15062

☒ New Hire ☐ Rehire ☐ Recall from Layoff ☐ Reinstatement

Employee Information:

Social Security # (if known) [REDACTED]		Date of Birth (if known) [REDACTED]		Sheriff's Office PSN (if applicable)	
First Name Elias	Preferred Name (if Different)		MI C	Last Name Pena	
Address [REDACTED]		City [REDACTED]	State [REDACTED]	Zip [REDACTED]	Home Phone [REDACTED]

Employment Information: ☐ Clark County Employee ☐ Other Agency _____

Department Public Works		Division Road Operations		Location PW - Operations		Bargaining Unit / Employee Group Local 307 AFSCME	
Position No. ROP0115	FTE 1	Job Classification Highway Maintenance Worker		Working Title (if different)		Supervisor Ken Price	
Assignment Category							
<input checked="" type="checkbox"/> Regular Employee <input type="checkbox"/> Project Employee - End Date _____ <input type="checkbox"/> Temporary <input type="checkbox"/> Job Share <input type="checkbox"/> Fellowship							

Salary Information:

Range PS.104	Step 1	Rate 18.68	Special Ceiling
Other Approved <input type="checkbox"/> Specialty Pay <input type="checkbox"/> Double-Fill <input type="checkbox"/> Upper Step Appointment <input type="checkbox"/> Credit for Temp Service			
Attach supporting documentation			

Payroll Information:

Work Schedule 9/80 – Mon-Thurs 9 hrs w/ 8 hrs every other Fri.					Timecard Approver Ken Price					OTL Link (if known) 600PW_MMS_L307							
Default Coding																	
Percent 100 %	Fund 1012	Prog - 000	Dept - 632	Basub - 542712	Reporting Category - 000000	Percent %	Fund -	Prog -	Dept -	Basub -	Reporting Category -	Percent %	Fund -	Prog -	Dept -	Basub -	Reporting Category -
Percent %	Fund -	Prog -	Dept -	Basub -	Reporting Category -	Percent %	Fund -	Prog -	Dept -	Basub -	Reporting Category -	Percent %	Fund -	Prog -	Dept -	Basub -	Reporting Category -

Other Comments:

Underfill

Initiated by Sheila Ensminger Title Office Manager Date Signed 8/9/17
 Manager Signature [Signature] Date Signed 8/9/2017
 HR Representative Signature _____ Date Signed _____

Human Resources Use Only:

Data entered by				Date entered			
Retirement Plan Eligible For				<input type="checkbox"/> PERS <input type="checkbox"/> LEOFF <input type="checkbox"/> PSERS <input type="checkbox"/> Not Eligible			
Copy to <input type="checkbox"/> Payroll <input type="checkbox"/> Benefits <input type="checkbox"/> Other _____				Employee No Assigned			



proud past, promising future

CLARK COUNTY
WASHINGTONNot
returned**Safety Performance History Records Request****Section 1:****TO BE COMPLETED BY PROSPECTIVE EMPLOYEE**I, (Print
Name)Last PeriaFirst EliasM.I. C

Social Security Number: [REDACTED]

Date of Birth: [REDACTED]

hereby Authorize:

Previous Employer: NW Staffing

Previous Employer's

Phone: [REDACTED]

Fax: ()

Email:

Street, City, State:

to release and forward the information requested by section 4 B of this document concerning my Alcohol and
Controlled Substances Testing records within the previous 2 years from (date of employment application)(Application Date) 7/12/17

To:

Prospective Employer: **Clark County Public Works**

Attention: Sheila Ensminger

Street:

City, State, Zip:

Prospective employer's confidential fax number:

Prospective employer's confidential email address:

Applicants Signature [Signature]Date: 7/12/17

This information is being released in compliance with §40.25 and §391.23

Section 2:**TO BE COMPLETED BY PREVIOUS EMPLOYER**The applicant above was employed by us. Yes ☐ No ☐

Employed as _____ from (m/y) _____ to (m/y) _____

1. Did he/she drive a motor vehicle for you? Yes ☐ No ☐ If yes, what type?Straight truck ☐ Tractor-Semi-trailer ☐ Bus ☐ Cargo Tank ☐ Double Triplex☐ Other (Specify) _____If there is no safety performance history to report, check here ☐ sign below and return.**Accidents:** Complete the following for any accidents included on your accident register (§390.15(b)) that
involved the applicant in the 2 years prior to the application date shown above or check here ☐ if there is no
accident register data for this driver.

Date	Location	No. of Injuries	No. of Fatalities	Hazmat Spill
1.	1.	1.	1.	1.
2.	2.	2.	2.	2.
3.	3.	3.	3.	3.

CC_002075

**** Please Print Clearly****

CC 002081

CCHRIAPL

CC Application Report

100 CDC ?

Run Date: 22-MAY-2017 16:30:37

Mode: ALL

Vac Name	Vac Desc	Classification Name
IRC15062	Highway Maintenance Worker	Highway Maintenance Worker
	12-mo pool	

Page 1

Last Name	Pena	Applicant Number	[REDACTED]	Application Date	20-APR-17
First Name	Elias	Applicant Rank			
MI	C	Email Address	[REDACTED]		

Address	[REDACTED]	Accept Shift	Accept FT/PT EITHER
		Day Y	At Least 18? Y
		Night Y	Elig Work Us? Y
		Evening Y	
Phone Number	Times To Call	Weekend Y	
Emergency [REDACTED]	Any		
Cell [REDACTED]	Any		

Convicted Last 10 yrs?
Explain:

Employer Name	Start Date	End Date
NW Staffing/Clark County	April 2016	October 2016
Vancouver, Washington		

Job Title Flagger/Roads Maintenance

Job Duties

- *Performed general maintenance throughout Clark County.
- *Pruned, trimmed, weeded, and removed trees.
- *Drove County trucks and operated other county equipment in a responsible manner.
- *Flagged vehicular traffic through construction or maintenance projects.
- *Trash/animal pick-up and removal.
- *Emergency response and clean-up of diesel spills.

Leave Reason temporary position

Supervisor Name	Supvr Phone	Num Supvd	Hrs/Wk	Contact?
Mark	[REDACTED]	0	40	Y

CC_002085

CCHRIAPL

CC Application Report

Run Date: 22-MAY-2017 16:30:37

Mode: ALL

Vac Name	Vac Desc	Classification Name
IRC15062	Highway Maintenance Worker	Highway Maintenance Worker
	12-mo pool	

Page 2

Last Name	Pena	Applicant Number	[REDACTED]	Application Date	20-APR-17
First Name	Elias	Applicant Rank			
MI	C	Email Address	[REDACTED]		

Employer Name	Start Date	End Date
Tetra Pak	June 2015	April 2016
Vancouver, Washington		

Job Title Operations Associate

Christian Martindell
HR ext. [REDACTED]

Job Duties

- *Operated high-speed manufacturing equipment.
- *Loaded ingredients into Tetra Pak machines according to specifications.
- *Detected equipment problems and troubleshoot.
- *Inspected product as it moved through manufacturing process for quality.

Leave Reason Wanted Opportunity With County

Supervisor Name	Supvr Phone	Num Supvd	Hrs/Wk	Contact?
Jeff <i>Pray</i>	[REDACTED]	0	65	Y

Employer Name	Start Date	End Date
Esco Corporation	May 2010	November 2014
Portland, Oregon		

*HR says they
 Don't do references.
 7/24/17*

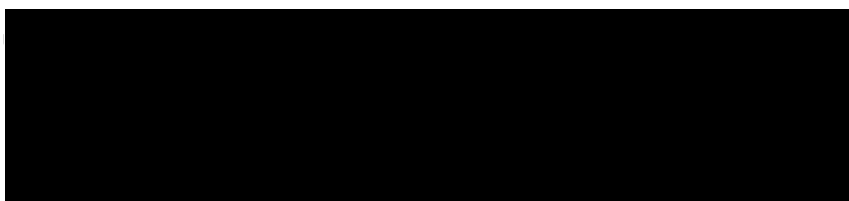
Job Title Molder/Machine Operator

Job Duties

- *Followed oral and written instructions.
- *Steel foundry work: molds, cores, pouring, sand handling, pattern making, shake out.
- *Poured or loaded metal or sand into molds using shovel, ladle, or machine.
- *Inspected metal casts, and molds for cracks, bubbles, or other defects and measure castings to ensure specifications are met.
- *Observed continuous operations of machines to detect jams or any malfunctions and make any necessary adjustments.

Leave Reason Laid Off

Supervisor Name	Supvr Phone	Num Supvd	Hrs/Wk	Contact?
Jason	[REDACTED]	0	40	Y



CC_002086

CCHRIAPL

CC Application Report

Run Date: 22-MAY-2017 16:30:37

Mode: ALL

Vac Name	Vac Desc	Classification Name
IRC15062	Highway Maintenance Worker 12-mo pool	Highway Maintenance Worker

Page 3

Last Name	Pena	Applicant Number	[REDACTED]	Application Date	20-APR-17
First Name	Elias	Applicant Rank			
MI	C	Email Address	[REDACTED]		

Employer Name	Start Date	End Date
Precision Pressure Wash Vancouver, Washington	January 2009	May 2010

Job Title Supervisor/Pressure Washer

Job Duties

- *Thorough knowledge of methods of maintaining, cleaning, and preserving a variety of surfaces.
- *Great knowledge of the proper use of a wide range of chemicals according to state and federal regulations.
- *Excellent knowledge of handling and disposing of hazardous materials.
- *Profound ability to work safely in an environment containing caustic chemicals.

Leave Reason Seeking Benefits

Supervisor Name	Supvr Phone	Num Supvd	Hrs/Wk	Contact?
Martin	[REDACTED]	5	40	Y

Employer Name	Start Date	End Date
Boise Cascade Vancouver, Washington	January 2006	January 2009

Job Title Forklift Operator/Grounds Maintenance

Job Duties

- *Operated forklift to organize and prepare merchandise for immediate sale.
- *Used communication equipment to consult with workers to coordinate activities and solve problems.
- *Performed preventive maintenance and followed written work orders.
- *Prepared records and reports pertaining to production and inventory.
- *Loaded/unloaded trucks with heavy parcels and inspected packages for damage.
- *Maintained yard and landscaped areas.

Leave Reason Laid Off

Supervisor Name	Supvr Phone	Num Supvd	Hrs/Wk	Contact?
Bill	[REDACTED]	0	40	Y

Education and Training:

CC_002087

CCHRIAPL

CC Application Report

Run Date: 22-MAY-2017 16:30:37

Mode: ALL

Vac Name	Vac Desc	Classification Name
IRC15062	Highway Maintenance Worker	Highway Maintenance Worker
	12-mo pool	

Page 4

Last Name	Pena	Applicant Number	[REDACTED]	Application Date	20-APR-17
First Name	Elias	Applicant Rank			
MI	C	Email Address	[REDACTED]		

Establishment	Location	Degree	Major Subject
Fort Vancouver Highschool	Vancouver, US	Certificate	General Education

Certificates, Licenses & Registrations:

Category	Type	Additional Info No.	Date Received	Expiry Date
Certificate	Flagger Certificate	286152		May 2019
Certificate	Other Certificate	Forklift operator		
Certificate	Other Certificate	Lock out/tag out certificate		
Certificate	Other Certificate	confined space certificate		
License	Driver's License	valid license		July 2018

Skill	Level	Skill	Level
5 Yard Truck	7+ years Experience	Blowers	7+ years Experience
Chain link fencing installation and repair	5 years Experience	Chainsaw	7+ years Experience
Cutting brush by hand / using a chipper	7+ years Experience	Dumptruck (1 ton)	7+ years Experience
Flagging traffic / setting up traffic controls	5 years Experience	Hand Tools	7+ years Experience
Hedge Trimmers	7+ years Experience	Landscape installation of plant materials / seed / sod	7+ years Experience
Loading materials into dump trucks and hauling materials	7+ years Experience	Mower (Riding)	7+ years Experience
Mowing / Weedeating	7+ years Experience	Post Hole Digger	7+ years Experience
Pothole patching, using either hot or cold mix	5 years Experience	Report Preparation	7+ years Experience
Supervision	4 years Experience	Tractor	7+ years Experience
Weedeater	7+ years Experience		

CC_002088

CCHRIAPL

CC Application Report

Run Date: 22-MAY-2017 16:30:37

Mode: ALL

Vac Name	Vac Desc	Classification Name
IRC15062	Highway Maintenance Worker 12-mo pool	Highway Maintenance Worker

Page 5

Last Name	Pena	Applicant Number	██████████	Application Date	20-APR-17
First Name	Elias	Applicant Rank			
MI	C	Email Address	██		

User Uploaded Documents:

File Name	Description	Type	Creation Date
Elias C Pena Resume Waste Water Operator.docx		RESUME	08-MAY-2017 16:34:05
Elias Pena Cover Letter Wastewater Operator.docx		COVERLETTER	08-MAY-2017 16:34:05
Elias cover letter Maint. Highway.docx		COVERLETTER	20-APR-2017 19:29:00
Elias C Pena Resume Highway Maint. Worker.docx		RESUME	20-APR-2017 19:29:00
Elias C Pena Resume.docx		RESUME	27-FEB-2017 16:20:37
Elias Pena weed control tech..docx		COVERLETTER	27-FEB-2017 16:20:37
Elias C Pena Resume.docx		RESUME	12-JAN-2017 14:20:23
Cover Letter for Warehouse Helper.docx		COVERLETTER	12-JAN-2017 14:20:23
Elias C Pena Resume.docx		RESUME	11-NOV-2016 10:54:01
Elias Pena Cover Letter.docx		COVERLETTER	11-NOV-2016 10:54:01
Elias-Pena (10).pdf		RESUME	27-JUN-2016 17:31:12
Cover Letter CC.rtf		COVERLETTER	27-JUN-2016 17:31:12
1353667902.docx		RESUME	09-SEP-2013 15:13:41

Assignment Status	Change Reason	Status Change Date
Active Application		20-APR-2017 00:00:00
ER - Eligible		22-MAY-2017 00:00:00

Clark County Attached Text and Documents:

Description	Last Update By	Last Update Date
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Description	Type	Name	Last Update By	Last Update Date
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CC_002089

CCHRIAPL

CC Application Report

Run Date: 22-MAY-2017 16:30:37

Mode: ALL

Vac Name	Vac Desc	Classification Name
IRC15062	Highway Maintenance Worker 12-mo pool	Highway Maintenance Worker

Page 6

Last Name	Pena	Applicant Number	[REDACTED]	Application Date	20-APR-17
First Name	Elias	Applicant Rank	[REDACTED]		
MI	C	Email Address	[REDACTED]		

CC_002090

CLARK COUNTY

PERSONNEL ACTION FORM - Status Changes/Termination

Effective Date Of Change: 01-SEP-17**Employee Information:**

Employee No	First Name Elias	MI C	Last Name Pena
GRE Clark County	Hire Date 15-AUG-17	Preferred First Name Elias	Preferred Last Name Pena

Type of Status Change

Position Change <input type="checkbox"/> Transfer <input type="checkbox"/> Reclassification <input type="checkbox"/> Promotion <input type="checkbox"/> Reassignment <input type="checkbox"/> Voluntary Demotion	Pay Change <input type="checkbox"/> Salary Increase <input type="checkbox"/> Work out of Class <input type="checkbox"/> Pay Grade Realignment <input type="checkbox"/> Special Assignment <input type="checkbox"/> Special Steps	Leave of Absence <input type="checkbox"/> Personal <input type="checkbox"/> Family Medical Leave <input type="checkbox"/> Pregnancy Disability Leave <input type="checkbox"/> Military Leave <input type="checkbox"/> Educational <input type="checkbox"/> Return from Leave	Misc. Transaction <input type="checkbox"/> Title Change <input type="checkbox"/> Change in FTE <input type="checkbox"/> Schedule Change <input type="checkbox"/> Other	Terminations <input type="checkbox"/> Termination <input type="checkbox"/> Resignation <input type="checkbox"/> Layoff <input type="checkbox"/> Retirement
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Employment Information: 16-JAN-18

Assignment Status Active Assignment	Assignment Category Fulltime-Regular	Job Classification Title Highway Maintenance Worker	Position No. ROP0111	FTE 1
Department Public Works	Division Road Operations	Working Title Highway Maintenance Worker		
Organization PW- Road Operations	Location PW Operations	Supervisor Kenneth Price	Hours Worked 40	
	Employee Group PS	Bargaining Group Local 307 AFSCME	Leave Category PC	
OTL Link 600PW_MMS_L307	Classification Date 15-AUG-17	Adjusted Accrual Date 15-AUG-17	Union Seniority Date 15-AUG-17	
Special Pay		Comments		

Salary Information: 01-JAN-18

Hourly/Salaried Hourly	Salary Basis Regular Wage 2080	Rate of Pay 19.09
Range PS.104	Step 1	Special Ceiling
Change Reason General Wage Increase	Salary Anniversary Date 01-AUG-2018	Next Review / Step Date

Leave of Absence:

Start Date:	Expected Date of Return	Reason:
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Termination:

Last day of Employment:	Last Date Paid:	Reason:
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Initiated by: _____	Date: _____
Manager's Signature: _____	Date: _____
HR Representative Signature: _____	Date: _____

HRIS Entered by: _____ Date Entered: _____

Copy to: ☐ Payroll ☐ Benefits**Department - Retain copy for your records**

CLARK COUNTY

PERSONNEL ACTION FORM - Status Changes/Termination

Effective Date Of Change: 01-SEP-17**Employee Information:**

Employee N°	First Name Elias	MI C	Last Name Pena
GRE Clark County	Hire Date 15-AUG-17	Preferred First Name Elias	Preferred Last Name Pena

Type of Status Change

Position Change <input type="checkbox"/> Transfer <input type="checkbox"/> Reclassification <input type="checkbox"/> Promotion <input type="checkbox"/> Reassignment <input type="checkbox"/> Voluntary Demotion	Pay Change <input type="checkbox"/> Salary Increase <input type="checkbox"/> Work out of Class <input type="checkbox"/> Pay Grade Realignment <input type="checkbox"/> Special Assignment <input type="checkbox"/> Special Steps	Leave of Absence <input type="checkbox"/> Personal <input type="checkbox"/> Family Medical Leave <input type="checkbox"/> Pregnancy Disability Leave <input type="checkbox"/> Military Leave <input type="checkbox"/> Educational <input type="checkbox"/> Return from Leave	Misc. Transaction <input type="checkbox"/> Title Change <input type="checkbox"/> Change in FTE <input type="checkbox"/> Schedule Change <input type="checkbox"/> Other	Terminations <input type="checkbox"/> Termination <input type="checkbox"/> Resignation <input type="checkbox"/> Layoff <input type="checkbox"/> Retirement
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Employment Information: 15-AUG-17

Assignment Status Active Assignment	Assignment Category Fulltime-Regular	Job Classification Title Highway Maintenance Worker	Position No. ROP0115	FTE 1
Department Public Works	Division Road Operations	Working Title Highway Maintenance Worker		
Organization PW- Road Operations	Location PW Operations	Supervisor Kenneth Price	Hours Worked 40	
	Employee Group PS	Bargaining Group Local 307 AFSCME	Leave Category PC	
OTL Link 600PW_MMS_L307	Classification Date 15-AUG-17	Adjusted Accrual Date 15-AUG-17	Union Seniority Date 15-AUG-17	
Special Pay		Comments		

Salary Information: 01-JAN-18

Hourly/Salaried Hourly	Salary Basis Regular Wage 2080	Rate of Pay 19.09
Range PS.104	Step 1	Special Ceiling
Change Reason General Wage Increase	Salary Anniversary Date 01-AUG-2018	Next Review / Step Date

Leave of Absence:

Start Date:	Expected Date of Return	Reason:
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Termination:

Last day of Employment:	Last Date Paid:	Reason:
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Initiated by: _____	Date: _____
Manager's Signature: _____	Date: _____
HR Representative Signature: _____	Date: _____

HRIS Entered by: _____	Date Entered: _____
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Copy to: ☐ Payroll ☐ Benefits

Department - Retain copy for your records

CLARK COUNTY

PERSONNEL ACTION FORM - Status Changes/Termination

Effective Date Of Change: 15-AUG-17**Employee Information:**

Employee No.	First Name Elias	MI C	Last Name Pena
GRE Clark County	Hire Date 15-AUG-17	Preferred First Name Elias	Preferred Last Name Pena

Type of Status Change

Position Change	Pay Change	Leave of Absence	Misc. Transaction	Terminations
<input type="checkbox"/> Transfer	<input type="checkbox"/> Salary Increase	<input type="checkbox"/> Personal	<input type="checkbox"/> Title Change	<input type="checkbox"/> Termination
<input type="checkbox"/> Reclassification	<input type="checkbox"/> Work out of Class	<input type="checkbox"/> Family Medical Leave	<input type="checkbox"/> Change in FTE	<input type="checkbox"/> Resignation
<input type="checkbox"/> Promotion	<input type="checkbox"/> Pay Grade Realignment	<input type="checkbox"/> Pregnancy Disability Leave	<input type="checkbox"/> Schedule Change	<input type="checkbox"/> Layoff
<input type="checkbox"/> Reassignment	<input type="checkbox"/> Special Assignment	<input type="checkbox"/> Military Leave	<input type="checkbox"/> Other	<input type="checkbox"/> Retirement
<input type="checkbox"/> Voluntary Demotion	<input type="checkbox"/> Special Steps	<input type="checkbox"/> Educational		
		<input type="checkbox"/> Return from Leave		

Employment Information: 15-AUG-17

Assignment Status Active Assignment	Assignment Category Fulltime-Regular	Job Classification Title Highway Maintenance Worker	Position No. ROP0115	FTE 1
Department Public Works	Division Road Operations	Working Title Highway Maintenance Worker		
Organization PW- Road Operations	Location PW Operations	Supervisor Kenneth Price	Hours Worked 40	
	Employee Group PS	Bargaining Group Local 307 AFSCME	Leave Category PC	
OTL Link 600PW_MMS_L307	Classification Date 15-AUG-17	Adjusted Accrual Date 15-AUG-17	Union Seniority Date 15-AUG-17	
Special Pay	Comments			

Salary Information: 15-AUG-17

Hourly/Salaried Hourly	Salary Basis Regular Wage 2080	Rate of Pay 18.68
Range PS.104	Step 1	Special Ceiling
Change Reason New Hire	Salary Anniversary Date 01-AUG-2018	Next Review / Step Date

Leave of Absence:

Start Date:	Expected Date of Return	Reason:
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Termination:

Last day of Employment:	Last Date Paid:	Reason:
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Initiated by: _____	Date: _____
Manager's Signature: _____	Date: <u>8/11/17</u>
HR Representative Signature: <u>51</u>	Date: _____

HRIS Entered by: _____	Date Entered: _____
Copy to: <input type="checkbox"/> Payroll <input type="checkbox"/> Benefits	Department - Retain copy for your records

EXHIBIT B

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

ELIAS CORTEZ PENA, an individual,

Plaintiff,

v.

ESCO CORPORATION, a domestic
corporation,

Defendant.

Case No. _____

COMPLAINT & JURY TRIAL DEMAND

1. Retaliation ORS 659A.030(1)(f)
2. OFLA Interference & Retaliation ORS 659A.183 *et seq.*
3. Disability Discrimination ORS 659A.112 *et seq.*
4. Failure to Accommodate ORS 659A.112 *et seq.*
5. Common-Law Wrongful Termination

Fee Authority: Ch. 595, Sec. 15(1)(c)

Prayer Amount \$65,000.00

**NOT SUBJECT TO MANDATORY
ARBITRATION**

For his Complaint, Plaintiff, Elias Cortez Pena, alleges as follows:

JURISDICTION, VENUE AND PARTIES

1.

Defendant ESCO Corporation ("ESCO") is a domestic corporation with its principal place of business in Multnomah County, Oregon, that is licensed and registered to conduct business in Oregon.

2.

At all material times, ESCO employed Plaintiff in Multnomah County, Oregon.

3.

All or substantially all of the acts and omissions alleged herein occurred in Multnomah County, Oregon.

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4.

ESCO is vicariously liable for the acts of its agents and employees who were acting within the course and scope of their employment with ESCO.

STATEMENT OF FACTS

5.

Plaintiff worked for ESCO in Northwest Portland.

6.

Plaintiff is a member of a protected class in that he is Hispanic.

7.

In 2014, Plaintiff learned that ESCO was planning layoffs; he asked to “step down,”—i.e., take a voluntary demotion—to work at another facility so he could potentially avoid layoffs.

8.

ESCO denied Plaintiff’s request.

9.

Plaintiff had reason to believe that ESCO approved similar requests for employees outside his protected class. This and other observations of less preferential treatment led Plaintiff to believe that ESCO’s decision was racially motivated.

10.

Plaintiff complained to Teresa Hogan, an ESCO Human Resources Manager, in September and October 2014 that he believed he was being discriminated against based on his race.

11.

Plaintiff also set a meeting with Hogan and another supervisor to discuss his concerns about race discrimination at ESCO.

12.

After Plaintiff requested this meeting, Hogan disciplined Plaintiff for alleged unexcused absences.

13.

At least two of the absences for which Plaintiff was disciplined should not have been counted against him.

14.

Specifically, one absence was covered by PTO, and another absence took place on a day when Plaintiff's supervisor told him he could leave early.

15.

Plaintiff reasonably believed this discipline was retaliatory, in that Hogan disciplined Plaintiff in mid-October 2014 for alleged unexcused absences months earlier, in June and July 2014.

16.

When Plaintiff met with Hogan and another ESCO supervisor, Plaintiff reported not only race discrimination, but he also complained that Hogan was retaliating against him.

17.

The other ESCO supervisor at the meeting expressed concern about Plaintiff's report and pressed Hogan for an explanation about the timing of the disciplinary notice.

18.

Hogan claimed the timing was a coincidence, and was not retaliatory. Hogan said she would look into Plaintiff's report that some of the days should not have been counted against him and report back—but she never did. Her failure to do so was also retaliatory.

19.

On or around October 28, 2014, Hogan suspended Plaintiff for three days after a Caucasian co-worker intentionally injured Plaintiff with a motorized pallet jack and then angrily confronted Plaintiff, forcing Plaintiff to push him away. Plaintiff had reason to believe that he received harsher discipline for this incident than the Caucasian employee—despite the fact that the

1 Caucasian employee was the aggressor.

2 20.

3 On November 17, 2014, Plaintiff was again disciplined by ESCO and Hogan as a further act of
4 retaliation. This discipline involved Plaintiff allegedly leaving a work crane unattended.

5 21.

6 In fact, the act for which ESCO disciplined Plaintiff was routine.

7 22.

8 Moreover, Plaintiff's supervisor undoubtedly knew about the incident when it occurred, but said
9 nothing.

10 23.

11 Instead, ESCO disciplined Plaintiff days after the incident, after allegedly reviewing a video of
12 Plaintiff's work for some unknown reason. Hogan was directly involved in this discipline.

13 24.

14 Plaintiff told Hogan that he disagreed with the discipline, and that he viewed the discipline as an
15 additional act of retaliation.

16 25.

17 At all material times, Plaintiff suffered from severe migraines headaches, about which ESCO
18 was aware.

19 26.

20 Plaintiff was at work at ESCO on or around November 23, 2014 when he developed a
21 debilitating migraine headache.

22 27.

23 Plaintiff told his supervisor that he was suffering from a migraine headache, that he could not
24 work, and that he needed immediate medical care.

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28.

Plaintiff was excused from work by his supervisor. Plaintiff sought emergency medical treatment and obtained a note excusing him from work through November 25, 2014.

29.

On November 24, 2014, Plaintiff spoke with his manager before his next shift.

30.

During this call, Complainant confirmed that he was suffering from a debilitating migraine headache, that he had been treated for his condition at the ER, and that he had a note from his physician taking him off-work due to his migraine through November 25, 2014.

31.

A different manager called Plaintiff that same day and told Plaintiff he could miss any time because of his previous attendance issues.

32.

Plaintiff reiterated that he had been ordered off work by his doctor due to a severe migraine headache. The manager said he would speak with HR call back.

33.

Shortly thereafter, a Human Resources (HR) representative called and Plaintiff also told this HR representative that he had been ordered off-work by his doctor because of a severe migraine headache. Plaintiff explained that he believed his absence was protected since he had been to the ER and since his migraines were a chronic problem. The HR employee said he would talk with Hogan and call back.

34.

The same HR employee called Plaintiff later that day. During this call, the HR employee confirmed he had communicated with Hogan, and that Hogan and ESCO had made the decision to terminate Plaintiff due to his absences on November 23, 2014, and November 24, 2014.

DAMAGES

35.

Plaintiff has suffered and continues to suffer loss of earnings and loss of benefits, which continue to accrue in an amount to be determined at trial, not to exceed \$40,000.

36.

Plaintiff suffered emotional distress as a result of the above unlawful conduct in the form of anxiety, depression, grief, worry and fear and requests an award of compensatory damages in an amount to be determined by a jury at trial, not to exceed \$25,000.

37.

Plaintiff also seeks reasonable attorney's fees and costs in an amount to be proven at trial pursuant to ORS 659A.885(1) and/or ORS 20.107; said attorney's fees are no more than \$6,055 as of the date of filing of the instant Complaint.

FIRST CLAIM FOR RELIEF
Retaliation – ORS 659A.030(1)(f)

38.

Plaintiff restates and incorporates by reference paragraphs 1-34, as though fully set forth herein.

39.

Plaintiff engaged in protected activity when Plaintiff opposed what he reasonably believed was unlawful discrimination and retaliation, as described in detail above.

40.

ESCO, acting through its employees and/or agents, retaliated against Plaintiff by disciplining Plaintiff and terminating Plaintiff in substantial part because of Plaintiff's oppositional conduct.

41.

In perpetrating the actions described in the above paragraphs, ESCO violated ORS 659A.030(1)(f), causing Plaintiff to suffer damages.

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42.

Plaintiff requests an award of damages, costs, and attorney's fees, as alleged in paragraphs 35 through 37, inclusive, supra.

SECOND CLAIM FOR RELIEF

OFLA Interference & Retaliation – ORS 659A.183 *et seq.*

43.

Plaintiff restates and incorporates by reference paragraphs 1-34, as though fully set forth herein.

44.

At all material times, Plaintiff suffered from a serious health condition, as set forth above. Plaintiff worked an average of more than 25 hours per week during the 180 days leading up to his utilization of leave that qualified as OFLA leave.

45.

ESCO employed 25 or more persons in Oregon for each working day during each of 20 or more calendar workweeks in the year immediately preceding the year in which Plaintiff utilized leave that qualified as protected medical leave under OFLA.

46.

ESCO interfered with Plaintiff's right to protected OFLA leave by denying Plaintiff the ability to take protected OFLA leave, by failing to inform Plaintiff of his right to OFLA leave, by failing to provisionally categorize Plaintiff's leave as a qualifying absence, and by terminating Plaintiff for his absences on or around November 23, 2014, and November 24, 2014.

47.

ESCO also retaliated against Plaintiff for utilizing leave that qualified as OFLA leave by terminating Plaintiff's employment in substantial part because he utilized such leave.

48.

In perpetrating the above actions, ESCO violated ORS 659A.183 *et seq.*, causing Plaintiff to suffer damages.

1 49.

2 Plaintiff requests an award of damages, costs, and attorney's fees as alleged in paragraphs 35 and
3 37, supra.

4 **THIRD CLAIM FOR RELIEF**
Disability Discrimination (ORS 659A.112 *et seq.*)

5 50.

6 Plaintiff restates and incorporates by reference paragraphs 1-34, as though fully set forth herein.

7 51.

8 At all material times, Plaintiff was "disabled" as that term is defined in ORS 659A.104 in that he
9 had an impairment that substantially limited one or major life activities including, but not
10 necessarily limited to: thinking. Despite Plaintiff's condition, Plaintiff was able to perform the
11 essential functions of his position. Plaintiff's condition was episodic in nature.

12 52.

13 In perpetrating the actions described above, ESCO subjected Plaintiff to disability discrimination
14 in violation of ORS 659A.112 *et seq.*, by terminating Plaintiff in substantial part because of
15 Plaintiff's disability.

16 53.

17 In perpetrating the above actions, ESCO violated ORS 659A.112 *et seq.*, causing Plaintiff to
18 suffer damages.

19 54.

20 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as alleged in
21 paragraphs 35 through 37 inclusive, supra.

22 **FOURTH CLAIM FOR RELIEF**
Failure to Accommodate ORS 659A.118 *et seq.*

23 55.

24 Plaintiff restates and incorporates by reference paragraphs 1-34, and 51, as though fully set forth
25 herein.

1 56.

2 Despite knowledge of Plaintiff's disability, the symptoms of Plaintiff's disability, and/or
3 Plaintiff's request for accommodation in the form of a leave of absence to seek medical
4 treatment and recover from his episodic condition, ESCO failed to accommodate Plaintiff by
5 permitting Plaintiff to take leave as a reasonable accommodation on November 23, 2014, and
6 November 24, 2014, and by failing to engage in the interactive process with Plaintiff.

7 57.

8 In perpetrating the actions described in the above paragraphs, ESCO, acting through its
9 employees, violated ORS 659A.112 *et seq.*, causing Plaintiff to suffer damages.

10 58.

11 Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as alleged in
12 paragraphs 35 through 37 inclusive, *supra*.

13 **FIFTH CLAIM FOR RELIEF**

14 Common-Law Wrongful Discharge

15 59.

16 Plaintiff restates and incorporates by reference paragraphs 1-34, as though fully set forth herein.

17 60.

18 At all materials times, the public policy of the State of Oregon prohibited an employer from
19 retaliating against an employee for requesting or utilizing leave that qualified as FMLA/OFLA
20 leave or leave the employee reasonably believed qualified as protected medical leave.

21 61.

22 This public policy is embodied in the common law, statutes, and regulations of the State of
23 Oregon protecting employees from retaliation because they request or utilize FMLA/OFLA leave
24 or leave reasonably believed to qualify as protected medical leave including, but not limited to
25 ORS 659A.183 and *Yeager v. Providence Health Sys. Oregon*, 195 Or. App. 134 (2004).

62.

ESCO, acting through its agents and/or employees, violated the above public policies by terminating Plaintiff in substantial part because Plaintiff utilized protected OFLA leave and/or leave he reasonably believed was protected by FMLA or OFLA, as described in detail above.

63.

ESCO's discharge of Plaintiff was taken in substantial part because of Plaintiff's exercise of Plaintiff's rights related to his employment, which are of important public interest.

64.

Plaintiff requests an award of damages, equitable relief, costs, and attorney's fees as alleged in paragraphs 35 through 37 inclusive, supra.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all claims and issues to the extent allowed under the law.

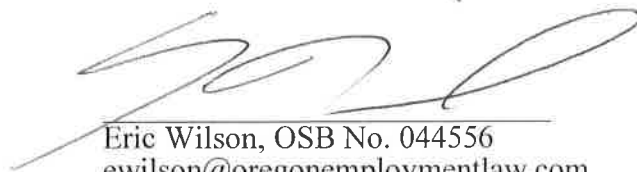
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following judgments and relief according to proof:

1. Economic damages;
2. Non-economic damages;
3. Reasonable costs and attorney's fees per statute;
4. All such other relief as this Court may deem proper.

Dated: March 9, 2016.

ERIC WILSON, P.C.



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Tel: (503) 880-9372
Attorneys for Plaintiff

EXHIBIT C

11:23:36AM 1 THE COURT: Thank you. Ms. Freeman.

11:23:40AM 2 MS. FREEMAN: Yes, your Honor. Mr. Pena's prior
11:23:43AM 3 lawsuit against his -- the employer he worked for right
11:23:47AM 4 before he came to Clark County was not just for
11:23:50AM 5 particularly discrimination, it included allegations of
11:23:53AM 6 race discrimination.

11:23:54AM 7 It is significant for a number of reasons, not the
11:23:57AM 8 least of which what you mentioned, that he told Dr. Brown
11:24:02AM 9 that he had a positive experience when he reported
11:24:05AM 10 concerns to his prior employer. Actually, his lawsuit
11:24:09AM 11 alleges that when he reported concerns to his employer he
11:24:12AM 12 was fired, and he was fired because of his race. So that
11:24:15AM 13 goes to his credibility.

11:24:17AM 14 It also is relevant to issues of causation here.
11:24:20AM 15 Both Dr. Brown, plaintiff Pena, apparently Mr. Pena's
11:24:25AM 16 spouse, are prepared to testify about his damages in this
11:24:28AM 17 case, about emotional distress, anxiety, other conditions
11:24:33AM 18 that they will attribute to Clark County, they allege were
11:24:40AM 19 caused by the racially hostile work environment at Clark
11:24:44AM 20 County. In fact, immediately before -- And that he had
11:24:47AM 21 no prior problems with employment or issues of
11:24:49AM 22 discrimination with an employer.

11:24:52AM 23 Immediately before coming to Clark County, Mr. Pena
11:24:55AM 24 filed this lawsuit alleging that his prior employer, ESCO,
11:24:59AM 25 caused him the same damages, emotional distress, anxiety,

—Barry L. Fanning, RMR, CRR - Official Court Reporter—

(253) 882-3833 Barry_Fanning@WAWD.uscourts.gov

1717 Pacific Ave - Tacoma, WA 98402

11:25:03AM 1 et cetera, because of their race discrimination against
11:25:07AM 2 him. And so we are entitled to bring this evidence in as
11:25:10AM 3 to not only, again, credibility -- there are some
11:25:13AM 4 credibility impeachment issues here, but also to provide
11:25:18AM 5 additional evidence of what the plaintiff himself has
11:25:24AM 6 said, other causes of his emotional distress and similar
11:25:28AM 7 physical and psychological symptoms.

11:25:30AM 8 It is also significant that -- you know, we should be
11:25:31AM 9 able to ask Dr. Brown about this, in terms of what her
11:25:35AM 10 subject did or did not disclose to her, and the way --
11:25:39AM 11 what information in addition to the comment made earlier,
11:25:43AM 12 other information he did or did not disclose to her that
11:25:47AM 13 was inconsistent with his actual sworn lawsuit against his
11:25:52AM 14 prior employer.

11:25:57AM 15 MR. LOZADA: Judge, can I make some further
11:26:01AM 16 argument?

11:26:01AM 17 THE COURT: Yes.

11:26:02AM 18 MR. LOZADA: These are two different employers.
11:26:04AM 19 Dr. Brown mentioned one employer that Mr. Pena had some
11:26:09AM 20 disagreement with. These are not credibility issues.
11:26:12AM 21 These are two different employers. They are not related.
11:26:15AM 22 It is our position that this information is not probative
11:26:17AM 23 of anything. It is misleading, it is distracting, and it
11:26:23AM 24 should not be introduced at trial.

11:26:27AM 25 THE COURT: All right. Thank you. While, yes, I

11:26:36AM 1 do agree this has some different issues involved in the
11:26:39AM 2 litigation, I think it is something that's referenced --
11:26:46AM 3 although not specifically identified, but referenced by
11:26:49AM 4 Dr. Brown about prior employment and having similar issues
11:26:53AM 5 or possibly similar issues in a prior employment. I do
11:26:58AM 6 think that can be addressed or at least examined with
11:27:03AM 7 Dr. Brown.

11:27:05AM 8 And likewise, to the extent that Mr. Pena identifies
11:27:11AM 9 in his testimony that, "Hey, I have not had to go through
11:27:14AM 10 this," or, "I have not had issues similar to this before,"
11:27:20AM 11 again, I think that can be referenced as far as possible
11:27:24AM 12 impeachment. I am going to deny this, allow it for
11:27:29AM 13 impeachment purposes. That's Motion in Limine No. 1. I
11:27:39AM 14 am going to deny that.

11:27:42AM 15 No. 2, I think it has been resolved, given that the
11:27:50AM 16 L&I ALJ -- the ALJ withdrew their decision --

11:27:59AM 17 MR. LOZADA: Your Honor, for No. 2, we had two
11:28:01AM 18 questions. The first is that opposing counsel filed a
11:28:05AM 19 supplemental declaration withdrawing their opposition to
11:28:08AM 20 our motion in limine. But then she says that if the
11:28:13AM 21 plaintiffs introduced testimony, evidence that opens the
11:28:16AM 22 door, then they can reference it.

11:28:18AM 23 We need clarification of what does opening the door
11:28:21AM 24 mean. Specifically, Mr. Hutson was on workers' comp from
11:28:25AM 25 January 2020 to December 2021. Would that alone be